

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
DECEMBER 22, 2008**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, December 22, 2008 at 2:00 p.m. in the City Council Chamber of the Melvin Municipal Office Building. The following Board members were present: Chair John Cross, Russ Parmele, Scott Brewington, Bill Strickland, Rick Pinto, Clinton Turner and Ryan Shell. Staff present were Rawls Howard, Zoning Administrator, Loray Averett, Zoning Services Coordinator and Jerry Kontos, City Attorney's Office.

Chair Cross called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. Chair Cross also advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES

Mr. Strickland moved to approve the minutes of the November 24, 2008 meeting, seconded by Mr. Brewington. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Mr. Howard and Ms. Averett were sworn in as to all testimony given by them at today's meeting.

NEW BUSINESS

VARIANCE

- (A) **BOA-08-29 1115 SUMMIT AVENUE TACO BELL OF AMERICA, INC. REQUESTS A VARIANCE FROM THE MINIMUM NUMBER OF STACKING SPACES REQUIRED FOR A RESTAURANT WITH DRIVE THROUGH SERVICES. VIOLATION: THE APPLICANT IS PROPOSING TO PROVIDE 9 STACKING SPACES WHILE THE ORDINANCE REQUIRES 11 STACKING SPACES; THEREFORE A VARIANCE FOR 2 STACKING SPACES IS REQUESTED. THIS CASE WAS PREVIOUSLY HEARD AND APPROVED AT THE MAY 29, 2007 MEETING. TABLE 30-5-3-1, PRESENT ZONING-GB, BS-12, CROSS STREET-FOURTH STREET. (GRANTED)**

Mr. Howard stated that the applicant is proposing to reduce his required drive through stacking spaces. They are required to provide 11 and can provide 9; thus requesting a variance for 2 stacking spaces.

This case was previously heard at the May 29, 2007 meeting and was approved. The applicant did not begin construction within 12 months and the variance has expired. The applicant is requesting the same variance. The property is located at the southwestern intersection of Summit Avenue and 4th Street on zoning map block sheet 12 and is zoned GB. The property contains a Taco Bell Restaurant. The applicant is proposing to demolish the existing Taco Bell Restaurant and rebuild the site. The minimum size requirement for a stacking space is 9 feet x 20 feet. The applicant is proposing to provide 9 stacking spaces while the Ordinance requires 11 stacking spaces; thus,

requesting a variance for 2 stacking spaces. The zoning office met with the site engineers and David Ortega EIT, Design Review Engineer with the Greensboro Department of Transportation in reference to reducing the number of stacking spaces from 11 spaces to 9 spaces. The GDOT design reviewer is supportive of the stacking reduction request.

The old building must be torn down. Due to the building design and the shape of the lot, it became very difficult to provide 11 stacking spaces, while leaving the remaining stationary spaces functional. The lot currently has two driveway cuts on Summit Avenue and the applicant is proposing to reduce this to one driveway cut. The new driveway will be shifted and more centered on the lot, thus creating more distance from the intersection which results in a safer movement for the vehicular travel flow.

On the proposed site plan, the applicant has shown that 4 standard parking spaces could become blocked by stacking spaces. These 4 spaces are overflow spaces (OF) and will be identified by signage for the employee's parking only. The GB, General Business District is primarily intended to accommodate a wide range of retail, service, and office uses. This district is typically located along thoroughfares in areas which have developed with minimal setbacks.

Chair Cross asked if there was anyone present wishing to speak on this matter.

Lee Garvin, representing Taco Bell of America, Inc., was sworn in and stated that due to today's economy they wish to redesign their equipment and demolish and upgrade the existing building. They have tried to purchase surrounding property to expand their site but have met with difficulty in obtaining additional land for their use. Therefore, they must deal with the property they have available. There have been meetings with GDOT, who supports their site plan and this request. In response to questions, Mr. Garvin stated that the size of the building will not be increased, they will only have a new design to improve customer service.

There was no one speaking in opposition to the request.

Mr. Pinto moved that in the matter of BOA-08-29, 1115 Summit Avenue, the findings of fact as presented by staff be incorporated into the findings and the Zoning Enforcement Officer be overruled and the variance be granted and incorporated, by reference, all of the basis found in the May 29, 2007 motion relevant to the same request, seconded by Mr. Turner. The Board voted 7-0 in favor of the motion. (Ayes: Cross, Pinto, Brewington, Strickland, Turner, Parmele and Shell. Nays: None.)

SPECIAL EXCEPTION

- (A) **BOA-08-30 7 ARBOR CROSSING COURT EMBRACE ENTERPRISES, LLC REQUESTS A SPECIAL EXCEPTION AS AUTHORIZED BY SECTION 30-5-2.37(B) TO ALLOW A SEPARATION OF 262 FEET FROM ONE FAMILY CARE HOME (6 OR LESS PERSONS) TO ANOTHER FAMILY CARE HOME (6 OR LESS PERSONS) WHEN 1,320 FEET IS REQUIRED. PRESENT ZONING-RS-9, BS-88, CROSS STREET - AMOS DRIVE. (DENIED)**

Mr. Howard stated that the applicant has located a family care home 262 feet from an existing family care which is located at 3601 Amos Drive. The minimum spacing separation requirement is

1,320 feet. It is 1,058 feet too close. The lot is located at the end of the cul-de-sac on Arbor Crossing Court east of Amos Drive. The applicant has located a family care home at 7 Arbor Crossing Court. It is approximately 262 feet from an existing family care home, which is located at 3601 Amos Drive. The homes are required to be separated by a minimum radius of $\frac{1}{4}$ mile, which is 1,320 linear feet.

On July 17, 2007, the applicant received a letter from the City Planning Department for $\frac{1}{4}$ mile clearance from other family care homes. This type of letter is only valid for the date it is issued and the letter contains information for the applicant to notify zoning when the home is established. This information allows zoning to more accurately track the family care home locations. If the applicants fail to notify zoning, then zoning has no way of knowing when the applicant took occupancy with their client(s). Zoning has no record of the applicant contacting us to verify occupancy as slated in the letter. The applicant proceeded to establish the home based on the issuance of the City letter as approval. At that time, there was an existing family care home located at 3601 Amos Drive. Business License Records reflect that home was established in August 2002. Based upon best available information at the time, the City GIS system did not reflect that any other family care home was in the $\frac{1}{4}$ mile radius.

In November 2008, the zoning office received a complaint that these two homes were too close. After investigation of these two locations, it was determined that the latter one located at 7 Arbor Crossing Court would need to request a Special Exception. The RS-9, Residential Single-Family District is primarily intended to accommodate moderate to high density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-9 will typically be 4.0 units per acre or less.

In response to questions by the Board, Mr. Howard stated that there has never been a comprehensive audit of any of the family care homes within the City. The Planning Department is going through a transition from a paper-tracking system to a newly updated GIS system. During the applicant's initial request, there was a lost-in-translation between the paper-tracking system and the GIS system that is currently being updated. Staff is currently going door-to-door to actually verify the existence of some of these family care homes. There is an inordinate amount of these homes that are listed but are not actually in operation. Some properties do not even have a home on the lot and is a vacant piece of property. As such, City staff is putting into place a more steadfast procedure in order to be able to permit a more accurate tracking process. Some of the applicant's never received verification of their ability to establish a family care home. The state also has to keep track of the licenses issued to these types of facilities.

Chair Cross asked if there was anyone present wishing to speak on this matter.

Contessa and Herb Strader, 8 Hickory Knoll Court, were sworn in and stated that they had gone through the process of applying for their licenses and permits to operate the facility. They were under the impression that they had followed all the pertinent guidelines necessary to open their facility. They purchased the home and have gotten their required inspections and thought that they were operating legally. They were unaware that there was another facility in the immediate area. They received their license to operate in January 2008 and did not start running the facility until mid-summer 2008.

Mr. Strader stated that he has been running residential facilities since the late 1990s. They checked, as best they could, to make sure that they were within their rights to open this facility on Arbor Crossing Court and they relied on the City staff to determine that they were operating lawfully. He

stated that the state does not check for zoning because they are using the Zoning permission letter that they received and submitted with their application.

Speaking in opposition to the request was Sherryll Williams, 3603 Amos Drive, who was sworn in and stated that it seems that the applicant's want to be in compliance with the regulations as well as the neighborhood. The restrictions placed on the use of the property were made by the City, not by the homeowners. She lives directly beside the other family care facility located at 3601 Amos Drive. She and her neighbors feel that it is difficult to sell homes if there are these types of facilities close by. There is more traffic from ambulance service and the police department because of that type of facility. She pointed out that there is a speech therapist that works for both group homes. She also pointed out that she was not notified of the application of a newly established family care home in this neighborhood. She feels that it causes more congestion in the neighborhood.

Speaking in rebuttal, Ms. Strader stated that she was unaware of any speech therapist that works at both homes in question. She reiterated that they tried to follow all the rules and regulations and relied on information given to them by the City personnel before they moved forward with their plans for their group home. Mr. Strader pointed out again, that the children are monitored at all times and are never left unsupervised at any time.

The Board members indicated that even though it is difficult not to be emotional about the impact closing this home would be on the children involved, they felt that they must uphold the Enforcement Officer and deny the request and let the applicants appeal their decision. That would allow the applicants to go through the proper process of obtaining a Special Exception through a decision by the Superior Court. They felt that if there were a major road or some other kind of separation between the homes they could justify a positive motion, but that is not the case here. There was also some discussion among the Board members about placing conditions on an approval of the Special Exception.

Mr. Brewington moved that in the matter of BOA-08-30, 7 Arbor Crossing Court, the findings of fact as presented by staff be incorporated into the record by reference and the Zoning Enforcement Officer be upheld and the Special Exception be denied as the granting of the Special Exception would not be in harmony with the general purpose and intent of the ordinance and preserve its spirit and by granting the Special Exception it would not ensure the public safety and welfare or do substantial justice, seconded by Mr. Pinto. The Board voted 5-2 in favor of the motion. (Ayes: Cross, Brewington, Parmele, Pinto and Strickland. Nays: Shell and Turner.)

Mr. Cross pointed out that the City has the discretion to delay enforcement of this decision for some time period and he hopes they will work it out, maybe an agreement with the City and applicant. Mr. Strickland stated that he feels the ordinance needs to be re-addressed with these types of situations.

* * * * *

There being no further business before the Board, the meeting adjourned at 3:17 p.m.

Respectfully submitted,

John Cross, Chairman
Greensboro Board of Adjustment

JC/jd